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UNCLAS SECTION 01 OF 03 OTTAWA 003179

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PASS TO USTR FOR GROVES, COLLEY, BAE, GARDE  
STATE FOR EB/TPP/IPE JENNIFER BOGER  
USDOC FOR CATHERINE PETERS

E.O. 12958: N/A  
TAGS: [CA](#) [ECON](#) [ETRD](#) [KIPR](#)  
SUBJECT: SPECIAL 301 OUT-OF-CYCLE REVIEW: EMBASSY VIEWS ON  
IPR SITUATION IN CANADA

REF: A. STATE 149667

[1](#)B. OTTAWA 3171  
[1](#)C. MONTREAL 365  
[1](#)D. MONTREAL 436

[1](#)1. (sbu) Summary: Canada is starting to take important steps toward improving protection for intellectual property rights since USTR kept Canada on the "Special 301" Watch List in April 2006. The new Conservative government is more receptive than its predecessor to U.S. concerns and on October 18 published new data protection regulations for pharmaceuticals, an action long advocated by the USG. The Canadian government is also preparing to introduce new copyright legislation designed to implement the WIPO Internet Treaties and address other IPR concerns. Cabinet secrecy rules prohibit GOC officials from discussing details in the legislation, but the bill is expected to be introduced in Parliament later in the fall. In addition, a Canadian interagency task force continues to examine international "best practices" for improving border enforcement against pirated / counterfeit goods. GOC officials stated that granting "ex officio" powers to border agents will likely be a key request of the task force. Canadian officials, however, are reluctant to make the act of camcording in movie theaters a criminal offense, which motion picture distributors seek to deal with a rapidly growing problem that is causing considerable revenue loss. End Summary

[1](#)2. (sbu) In April 2006, USTR retained Canada on the "Special 301" Watch List, and announced an Out-of-Cycle Review in the fall to monitor Canada's progress in providing adequate and effective protection of intellectual property rights. USTR noted that the USG would look to the Government of Canada to:

-- ratify and implement the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty (WIPO Treaties);

-- amend Canada's copyright law to provide adequate and effective protection of copyrighted works in the digital environment; and

-- enact legislation to protect against unfair commercial use of undisclosed testing and other data submitted by pharmaceutical companies seeking marketing approval for their products.

USTR also called on Canada to improve its weak border enforcement measures, in part by granting customs officers

the authority to seize products suspected of being pirated or counterfeit without the need of a court order.

#### Post Views: Out of Cycle Review of Canada

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¶3. (sbu) Since April, Canada,s new government has started to take important steps aimed at improving intellectual rights protection on three principal fronts: data protection for pharmaceuticals, new copyright legislation, and improving border enforcement. In a significant action, the GOC published new data protection measures for pharmaceuticals in the Canada Gazette Part II on October 18, a step that the USG has long advocated. Progress in other IPR areas has been less public.

#### Data Protection Measures Published

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¶4. (sbu) The GOC published new data protection measures for pharmaceuticals in the Canada Gazette Part II on October 18. Canadian officials state that the regulations will protect new and innovative drugs, ensure that generic pharmaceuticals come into the market with a greater certainty, and improve Canada,s international competitiveness - while providing QCanada,s international competitiveness - while providing opportunities for U.S. companies to enter the Canadian market. GOC officials tell us that new chemical entities ("innovative drugs" containing an ingredient not previously introduced in Canada or a variation of a previously ingredient) will enjoy eight years of data exclusivity, and that filings for generic drugs will be prohibited for six years (with an additional six months exclusivity for pediatric studies). New dosage formulations, changes in drug use, and changes in dosages are to be protected under the proposed regulations

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The data protection regulations can be found at:  
<http://canadagazette.gc.ca/index-e.html>

#### Copyright Legislation Being Drafted

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¶5. (sbu) The GOC is preparing copyright legislation expected to be introduced in Parliament later this fall. Canadian Heritage and Industry Canada officials representing the two ministries responsible for drafting the copyright bill decline to discuss details of the legislation because of strict Cabinet secrecy rules - but tell us that USG views are well known. These were recently outlined to the GOC in a bilateral meeting in Ottawa on October 5 (ref B). On October 11, USTR Schwab sent a letter to Industry Minister Maxime Bernier to reiterate the USG's specific interests in the pending copyright legislation. Copies of the letter were also delivered to Canadian Heritage Minister Beverley Oda and Trade Minister David Emerson.

¶6. (sbu) Canadian Heritage Minister Oda and Industry Minister Bernier have stated that WIPO implementation is a priority, and GOC officials intimate that the new legislation will be stronger than C-60, the previous government,s attempt to update Canada,s copyright regime, which failed to pass Parliament prior to the January 2006 election. For their part, Canadian Heritage officials admit that C-60 had been weak regarding circumvention devices, and note that Oda wants the new copyright bill to meet international standards. (Comment: Bill C-60 contained serious flaws including overly-broad ISP liability exceptions, a lack of ISP notice-and-takedown requirements, and weak or nonexistent deterrents against circumvention. End comment)

¶7. (sbu) GOC officials have been even less forthcoming on plans regarding Internet Service Provider (ISP) liability, but tell us that they are well aware of the USG,s preference

for a "notice and takedown" model. Officials suggest that a "notice and notice" system would be acceptable to domestic stakeholders.

#### Border Enforcement Improvements Still Being Studied

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¶18. (sbu) A Canadian interagency group continues to examine "best practices" and regulations to improve border enforcement. GOC officials are vague when formal recommendations will be made to Cabinet, but say the work of the group is "far advanced." GOC officials acknowledge that Canada is the only G-7 country yet to update its border enforcement regime, and appear to recognize that border officials should receive "ex officio" powers to seize suspected counterfeit / pirated goods. Officials also acknowledge that current arrangements between customs officials and the Royal Canadian Mounted Police (RCMP) for seizing illegal goods are cumbersome. However, law enforcement officials in some parts of Canada are occasionally willing to investigate and shut down illegal DVD operations, such as occurred in August in Toronto where local police arrested four individuals, seized over 140 DVD burners, and confiscated more than 20,000 counterfeit movie DVDs.

#### Reluctance to Move on Camcording

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¶19. (sbu) GOC officials question industry estimates about the extent of DVD piracy sourced from camcording in Canadian movie theaters, and are reluctant to make the act of camcording in theaters a criminal offense. (Canada,s Department of Justice considers camcording with an intent to distribute to be a criminal offense under Section 402 of the Copyright Act, but proving intent is often prohibitively difficult for prosecutors.) GOC officials also state that Canada,s law regarding camcording is modeled on international obligations requiring enforcement against "willful commercial piracy" (i.e., willful infringement for commercial purpose), and that the WTO TRIPs Agreement does not require camcording to be a criminal offense. Canadian DOJ officials also state that local police officers are generally not interested in taking action against individuals using camcorders in movie theaters. Official also suggest the motion picture industry should provide more reliable figures on camcording to back allegations that legislation is needed to combat the problem.

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¶10. (sbu) The Canadian Motion Picture Distributors Association believes that close to 75 percent of all films illegally camcorded in Canada are recorded in theaters in and around Montreal, which was recently identified as the topcity in the world for surreptitious camcording (ref C). The industry believes that this is a rapidly growing problem that is causing a considerable loss in revenue. It has also traced pirated DVDs to copies first recorded in theaters in Ontario, Nova Scotia, Alberta, and British Columbia.

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<http://www.state.sgov.gov/p/wha/ottawa>

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